IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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S.T.C. No.32 of 1987
Date of Decision:08.03.2007

M/s Associated Cement Company Limited, Surajpur

.....Petitioner

Vs.

The State of Haryana

.....Respondent

CORAM:- HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL

Present:- Mr. Avneesh Jhingan, Advocate for the petitioner.

Ms. Ritu Bahri, DAG, Haryana.

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M.M.KUMAR, J.

This order shall dispose of S.T.C. Nos.32 to 38 of 1987. The petitions have been filed under Section 42(2) of the Haryana General Sales Tax Act, 1973 with a prayer that the Sales Tax Tribunal, Haryana (for short, `the Tribunal') may be directed to refer the following questions of law for our determination:-

> "1. Whether on the facts and circumstances of the case interest was chargeable under section 25(5) of the Haryana General Sales-tax Act, 1973.
>
> 2. Whether on the facts and circumstances of the case the dealer- petitioner had failed to pay tax initially under section 25(3) of the Haryana General Sales-tax Act and is liable to pay interest on the difference between the tax deposited and to tax on final assessment."

It is appropriate to mention that the Tribunal in its order dated 2.12.1986 in S.T.A.Nos.449 to 454 of 1984-85 has placed reliance on a judgment of the Supreme Court in the case of **Associate Cement Company Ltd. v. Commerical Tax Officer**, **Kota,** (1981) 48 STC 466. The view taken by Hon'ble the Supreme Court in **Associate Cement Company's Case (supra)** has admittedly been overruled in the case of **J.K.Synthetics Ltd. v. Commerical Taxes Officer**, AIR 1994 SC 2393: (1994) 94 STC 422 and,

therefore, the afore-mentioned questions have been answered in favour of the assessee. In a later judgment delivered by Hon'ble the Supreme Court, the provisions of Haryana General Sales Tax Act, 1973 have been considered in the case of **Frick India Limited v. State of Haryana** (1994) 95 STC 188 and the view taken in **J.K.Synthetics' case (supra)** has been followed and applied. The position is the same in the Full Bench judgment of this Court in **United Riceland Limited and another v. State of Haryana and others**, (1997) 104 STC 362 and a Division Bench judgment of this Court in **M/s Chaudhary Tractor Company v. State of Haryana**, Sales Tax Interpretation 2006 Punjab & Haryana 55.

In view of the above, and overwhelming authorities of the Supreme Court and this Court, we answer the afore-mentioned questions in favour of the assessee and against the revenue. The afore-mentioned course has been adopted without issuing any direction to the Tribunal to frame the question and then make a reference to this Court by virtue of the view taken by the Division Bench of this Court in the case of **M/s Chaudhary Tractor Company (supra).** Accordingly, the case stands disposed of.

(M.M.KUMAR)
JUDGE

March 08, 2007 **(RAJESH BINDAL)**
renu **JUDGE**